



OFFICE of *the* ATTORNEY GENERAL
G R E G A B B O T T

October 29, 2003

Ms. Melissa L. Barloco
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR2003-7770

Dear Ms. Barloco:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190243.

The Harris County Fire Marshall (the "fire marshal") received a request for any files, records, photos, or videotapes pertaining to a particular fire. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304.

You assert that the submitted information is excepted from disclosure by section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information held by a law enforcement agency concerning an investigation that concluded in a result other than conviction or deferred adjudication. An arson investigation unit of a fire department is considered a law enforcement agency. *See* Open Records Decision No. 127 (1976). You explain that the "criminal investigation of the fire did not result in a conviction or deferred adjudication, and the case is closed." Therefore, we conclude that section 552.108(a)(2) is applicable to the submitted information.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*,

¹ Although you originally also asserted sections 552.101 and 552.103, you state that you are withdrawing your arguments under these sections.

531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the incident report. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Jennifer E. Berry". The signature is fluid and cursive, with the first name "Jennifer" being the most prominent part.

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 190243

Enc: Submitted documents

c: Mr. James Plummer
4410 Montrose Boulevard
Houston, Texas 77006
(w/o enclosures)